

DYNEGY INC /IL/  
Form 8-K  
November 05, 2004

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported)**

November 1, 2004

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**DYNEGY INC.**

(Exact name of registrant as specified in its charter)

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**Illinois**  
(State or Other Jurisdiction  
of Incorporation)

**1-15659**  
(Commission File Number)

**74-2928353**  
(I.R.S. Employer  
Identification No.)

**1000 Louisiana, Suite 5800  
Houston, Texas 77002**

(Address of principal executive offices including Zip Code)

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**(713) 507-6400**

**(Registrant's telephone number, including area code)**

**N.A.**

**(Former name or former address, if changed since last report)**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ..  Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ..  Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ..  Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ..  Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

On November 1, 2004, Dynegy Inc. ( Dynegy ), through one of its subsidiaries, entered into an agreement (the Purchase Agreement ) to purchase from Exelon Corporation ( Exelon ) (NYSE: EXC) all of the outstanding capital stock of ExRes SHC, Inc. ( ExRes SHC ), the parent company of Sithe Energies, Inc. and Sithe Independence, L.P ( Sithe Independence ). At closing, two simultaneous transactions will occur: Exelon, which currently owns a 50% interest in ExRes SHC, will acquire the remaining 50% interest in ExRes SHC from RCSE, LLC and then immediately sell 100% of the capital stock of ExRes SHC to a Dynegy subsidiary. Exelon also has the right to cause RCSE, LLC to transfer its 50% interest in ExRes SHC directly to a Dynegy subsidiary at the closing. ExRes SHC is primarily engaged in the physical power generation business in the New York marketplace.

Through this acquisition, Dynegy will acquire the 1,042-megawatt, 7,211-Btu heat rate, combined-cycle Independence power generation facility located near Scriba, NY, four natural gas-fired merchant facilities in New York and four hydroelectric generation facilities in Pennsylvania. Sithe Independence holds a 750-megawatt firm capacity sales agreement with Con Edison, a subsidiary of Consolidated Edison, Inc., which runs through 2014 and provides annual cash receipts to Sithe Independence of approximately \$100 million.

Sithe Independence is also party to tolling and financial swap contracts with a Dynegy subsidiary. The acquisition by Dynegy transforms the tolling and swap contracts into Dynegy intercompany agreements, substantially eliminating their impact on Dynegy s consolidated financial results by retaining the net cash flows within wholly-owned Dynegy subsidiaries. Under the terms of its indebtedness, however, Sithe Independence will have limitations on its ability to distribute cash to Dynegy.

The financial terms of the Purchase Agreement include the payment by Dynegy of \$135 million in cash and the consolidation of approximately \$919 million in face value project debt for which certain of the Exelon subsidiaries to be acquired are obligated. The aggregate purchase price is subject to certain adjustments as set forth in the Purchase Agreement.

The acquisition is expected to close within approximately 90 days; however, consummation of the acquisition is subject to certain closing conditions set forth in the Purchase Agreement, including the receipt of approvals from various federal and state regulatory entities, such as the Federal Energy Regulatory Commission and the New York Public Service Commission, as well as Hart-Scott-Rodino review by the Federal Trade Commission. The acquisition is not conditioned upon the receipt of financing by Dynegy.

The foregoing description of the Purchase Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, which Dynegy intends to file as an exhibit to its quarterly report on Form 10-Q for the period ended September 30, 2004.

**Forward Looking Statements**

Certain statements included in this Current Report on Form 8-K are intended as forward-looking statements. These statements include assumptions, expectations, predictions, intentions or beliefs about future events, particularly the statements concerning consummation of the acquisition described above and the impact of the acquisition on Dynegy s operations and financial results, including on the related tolling and financial swap arrangements. Dynegy cautions that actual future results may vary materially from those expressed or implied in any forward-looking statements. Some of the key factors that could cause actual results and the periods affected to vary materially from those expected include the receipt of required regulatory approvals and the satisfaction of other closing conditions. More information about the risks and uncertainties relating to these forward-looking statements are found in Dynegy s SEC filings, including its Annual Report on Form 10-K for

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the year ended Dec. 31, 2003, as amended, and its Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, which are available free of charge on the SEC's web site at <http://www.sec.gov>. Dynegy expressly disclaims any obligation to update any forward-looking statements contained in this Current Report on Form 8-K to reflect events or circumstances that may arise after the date of this report, except as otherwise required by applicable law.

### **Item 9.01 Financial Statements and Exhibits.**

- (a) Financial Statements of Businesses Acquired: Not applicable
- (b) Pro Forma Financial Information: Not applicable.
- (c) Exhibits: Not applicable.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DYNEGY INC.**  
(Registrant)

Dated: November 5, 2004

By: /s/ CAROL F. GRAEBNER

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Name: Carol F. Graebner  
Title: Secretary

ONT> 1,761 3,524 207.95 8/10/2022 1,455 339,073

7,770 190.12 8/12/2023 1,470 342,569

Douglas C. Barnard

4,660

125.33  
8/11/2018

6,700 82.03 8/10/2019

6,800 67.04 5/25/2020

6,600 81.30 8/10/2020

2,746 1,374 149.59 8/10/2021 1,390 323,926

1,626 3,254 207.95 8/10/2022 1,340 312,274

7,220 190.12 8/12/2023 1,370 319,265

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(1) The stock options were granted on the dates that are ten years prior to the option expiration dates shown in the same row of the table in each instance.

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- (2) Except as otherwise noted, the shares of restricted stock were granted on the same dates as the stock options shown in the same row of the table in each instance.
- (3) The shares of restricted stock listed for all of our officers (other than Mr. Kelleher's award from August 2011 as noted in footnote 4) will vest on the third anniversary of the grant date, subject to earlier forfeiture or accelerated vesting. Until vested, the shares of restricted stock may not be sold, assigned, transferred, donated, pledged, or otherwise disposed of (except by will or the laws of descent and distribution). We will pay dividends on the restricted stock to the named executive officers during the vesting period. Subject to earlier forfeiture or accelerated vesting, (i) the options granted on May 25, 2010 became exercisable on the third anniversary following the date of grant and will expire ten years from the date of grant and (ii) the other options shown in the table will generally become exercisable in three equal annual installments following the date of grant and will expire ten years from the date of grant. The accelerated vesting provisions and the other terms and conditions of the restricted stock and stock option awards granted in 2013 are described above under the heading "Compensation Discussion and Analysis Long-term Incentives."
- (4) Mr. Kelleher received an award of 5,180 shares of restricted stock in August 2011 upon joining the company. 31.25% of these shares vested on the first anniversary of the grant date, 31.25% of these shares vested on the second anniversary of the grant date and 37.5% will vest on the third anniversary of the grant date, subject to earlier forfeiture or accelerated vesting.

**Option Exercises and Stock Vested**

The following table sets forth certain information concerning stock option exercises by each of the named executive officers and the vesting of restricted stock held by each of the named executive officers during the year ended December 31, 2013.

Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
W. Anthony Will			6,100	1,143,005
Stephen R. Wilson	140,600	25,861,359	17,100	3,219,075
Dennis P. Kelleher			1,618	313,763
Bert A. Frost	175	29,526	3,400	640,050
Philipp P. Koch			3,400	640,050
Douglas C. Barnard			5,800	1,086,530
			54	

Table of Contents**Retirement Benefits**

The following table sets forth certain information concerning accumulated retirement benefits as of December 31, 2013 for each of the named executive officers.

Name	Plan Name <sup>(1)</sup>	Number of Years Credited Service <sup>(2)</sup> (#)	Present Value of Accumulated Benefit <sup>(2)(3)</sup> (\$)	Payments During Last Fiscal Year (\$)
W. Anthony Will <sup>(4)</sup>	New Retirement Plan	6.7	9,565	
	Supplemental Benefit and Deferral Plan	6.7	8,815	
Stephen R. Wilson	Old Retirement Plan	22	1,013,742	
	Supplemental Benefit and Deferral Plan	22	4,641,816	
Dennis P. Kelleher <sup>(4)</sup>	New Retirement Plan	2.4	7,832	
	Supplemental Benefit and Deferral Plan	2.4	8,446	
Bert A. Frost <sup>(4)</sup>	New Retirement Plan	5.1	9,705	
	Supplemental Benefit and Deferral Plan	5.1	8,182	
Philipp P. Koch	Old Retirement Plan	9.5	371,848	
	Supplemental Benefit and Deferral Plan	9.5	922,000	
Douglas C. Barnard	New Retirement Plan	10	10,727	
	Supplemental Benefit and Deferral Plan	10	8,203	

(1) Our Old Retirement Plan and our New Retirement Plan are each a tax-qualified defined benefit pension plan. Our Supplemental Benefit and Deferral Plan is a nonqualified benefits restoration and deferred compensation plan.

(2) The combined annual pension benefit under our Old Retirement Plan and our Supplemental Benefit and Deferral Plan assuming retirement at age 65 is equal to *the product of* (i) 1.75% times (ii) highest average earnings (base salary plus annual incentive earnings) over any consecutive 60 months times (iii) years of eligible service, reduced by a Social Security offset allowance; *provided, however*, that based on the normal form of benefit, the combined annual pension benefit will be capped at \$400,000 per year. Benefits under our Old Retirement Plan are paid on a straight line annuity basis, but married participants are paid an actuarially equivalent qualified joint and survivor annuity unless they elect a straight line annuity. Benefits under our Supplemental Benefit and Deferral Plan are paid in a lump sum unless the participant has elected a form of annuity permitted under our Old Retirement Plan. A special spousal benefit is payable as either a lump sum or, solely with respect to any qualified benefits, an annuity, in the event of a participant's death while an active employee. Participants who retire early between the ages of 55 and 65 will be entitled to receive a reduced annual pension benefit as set forth in the following table. Mr. Koch is

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62 years old. Except as discussed below under the heading "Potential Payments Upon Termination or Change in Control," we have no policy for granting extra years of age or service credit.

<b>Payments Begin at Age</b>	<b>Percent of Full Benefit</b>
65	100.00%
64	93.33%
63	86.67%
62	80.00%
61	73.33%
60	66.67%
59	63.33%
58	60.00%
57	56.67%
56	53.33%
55	50.00%

The annual pension benefit under our New Retirement Plan assuming retirement at age 65 is equal to the actuarial equivalent of a participant's cash balance account expressed as a single-life annuity payable monthly. The company provides an annual credit to each participant's cash balance account equal to a percentage of the participant's eligible compensation determined based on a participant's years of service (as set forth in the table below). Each participant's cash balance account will earn an annual return based on the greater of (i) the annual yield on 10-year treasury nominal securities and (ii) 3% annual interest.

<b>Completed Years of Cash Balance Service as of the Last Day of the Plan Year for Which the Pay Credit is Credited</b>	<b>Pay Credit as a Percentage of Compensation for the Plan Year</b>
Fewer than 5	4%
At least 5 but fewer than 10	5%
At least 10 but fewer than 15	6%
At least 15	7%

Benefits under our New Retirement Plan are paid in a straight life annuity or qualified joint and survivor annuity for unmarried and married participants, respectively, unless the participant has elected another form of annuity payment permitted under our New Retirement Plan or a lump sum payment. In the event of a participant's death while an active employee, a benefit is payable to a participant's beneficiary as a lump sum to the extent the beneficiary is not the participant's spouse and solely with respect to spousal beneficiaries, either a lump sum or an annuity. A participant who has not reached the age of 65, but has completed three years of vesting service may be eligible to receive a monthly retirement benefit under the New Retirement Plan.

(3)

Amounts in this column represent the actuarial present value of the named executive officers' accumulated pension benefits under our Old Retirement Plan, our New Retirement Plan and our Supplemental Benefit and Deferral Plan. Our assumptions with respect to the determination of this value are described in the footnotes to our audited financial statements as of and for the year ended December 31, 2013. For this purpose, we have also assumed retirement at age 65. Additional information with respect to the aggregate change over the past year in the actuarial present value of the named executive officers' accumulated pension benefits under these plans is set forth above under the heading "Summary Compensation Table."

(4)

Messrs. Will, Kelleher, Frost and Barnard are ineligible to participate in our Old Retirement Plan because their employment commenced after our Old Retirement Plan had been closed to new participants on December 31, 2003. Messrs. Will, Kelleher, Frost and Barnard are eligible to participate in the New Retirement Plan under which all domestic employees (including executive officers) became eligible to participate effective as of January 1, 2013, except for those employees who participate in the Old Retirement Plan.

Table of Contents**Nonqualified Deferred Compensation**

The following table sets forth certain information concerning nonqualified deferred compensation arrangements under our Supplemental Benefit and Deferral Plan for each of the named executive officers.

Name	Executive Contributions in Last FY <sup>(1)</sup> (\$)	Registrant Contributions in Last FY <sup>(2)</sup> (\$)	Aggregate Earnings in Last FY <sup>(3)</sup> (\$)	Aggregate Withdrawals/ Distributions (\$)	Aggregate Balance at Last FYE <sup>(4)</sup> (\$)
W. Anthony Will	14,100	14,100	37,963		224,363
Stephen R. Wilson	50,700	50,700	755,023		4,154,399
Dennis P. Kelleher	16,500	16,500	11,240		85,099
Bert A. Frost	12,900	12,900	26,302		152,806
Philipp P. Koch	11,700	11,700	23,801		163,712
Douglas C. Barnard	11,700	11,700	79,327		784,960

- (1) Under our Supplemental Benefit and Deferral Plan, each of the named executive officers may elect to defer (i) up to 6% of his base salary in excess of the annual compensation limit under Section 401(a)(17) of the Internal Revenue Code and (ii) up to 100% of his annual incentive payment. Amounts in this column represent the amounts we credited to the accounts of the named executive officers during 2013. There is typically an administrative delay between the time when a participant defers income under the plan and the time when we subsequently credit the participant's account. As a result of this delay, the amounts that we credited to the named executive officers' accounts during 2013 differ slightly from the amounts that the named executive officers deferred during 2013.
- (2) For 2013, for each named executive officer who elects to defer any of his base salary in excess of the annual compensation limit, we match (through further such credits to his deemed account) the portion (up to 6%) of his excess base salary that he elects to defer. Amounts in this column represent the amounts we credited to the accounts of the named executive officers during 2013. These credits are also reported above under the heading "Summary Compensation Table."
- (3) Under our Supplemental Benefit and Deferral Plan, each of the named executive officers makes notional investments of his account balance from time to time in shares of (i) our common stock or (ii) the public mutual funds we offer to our employees as investment alternatives under our 401(k) Plan.
- In order to make these notional investments, the named executive officer notifies the third-party plan administrator of his selections.
- The plan administrator then tracks the published total return on the actual securities underlying the named executive officer's notional investments, and we credit or debit the named executive officer's deemed account balance accordingly.
- Since all such credits and debits are determined by a third-party plan administrator and set to equal the published total return on notional capital market investments selected in advance by the named executive officers, none of the amounts shown in this column are reported as above-market or preferential earnings on nonqualified deferred compensation in the table set forth above under the heading "Summary Compensation Table."
- (4) In general, deferred amounts are paid out in a lump sum upon the termination of the named executive officer's employment.



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**Potential Payments Upon Termination or Change in Control**

In addition to the payments and benefits provided to our named executive officers pursuant to their change in control agreements described below, commencing with equity grants made in 2014, employees, including our named executive officers, who retire upon having reached age 60 with at least five years of service at the time of retirement will continue to vest in their stock option awards that were granted at least one year prior to their termination date and will receive a pro-rated number of restricted stock units and performance restricted stock units based on their length of service between the grant date of such award and the executive's retirement date and, with respect to performance restricted stock units, contingent upon the level of attainment of applicable performance goals, provided, that, in each case, the executive has provided us with at least six months' notice prior to such retirement if the executive is subject to the reporting requirements of Section 16 of the Exchange Act. In addition, such eligible retirees will have four years from their retirement date to exercise any vested options.

We have entered into change in control agreements with each of the named executive officers, each of which remains currently in effect other than the agreement with Mr. Wilson, which was effective only up until his retirement on January 1, 2014. As of his retirement effective January 1, 2014, Mr. Wilson is no longer covered under any change in control agreement with the company and, therefore, he is not entitled to any change in control benefits other than any benefits provided under the change in control provisions of our equity plans that govern equity awards generally. In connection with Mr. Will's election to the position of president and chief executive officer effective January 2, 2014, he became subject to a new change in control agreement providing for severance payments and benefits similar to those that had been available to Mr. Wilson under his change in control agreement prior to his retirement. The severance payments and benefits available to Mr. Will under his new change in control agreement are included in the description below.

Under the terms of the change in control agreements, the named executive officer is entitled to receive certain payments and benefits from us upon a qualifying termination, specifically if we terminate his employment without cause (other than by reason of his death or disability) or if he resigns because of good reason, in either case within the period of 24 months following (or in certain cases prior to) a change in control (as such terms are defined in the agreements).

Under the change in control agreements, a named executive officer will be deemed to have good reason if we:

fail to pay his specified annual salary or provide certain benefits;

assign him duties inconsistent with his current position or substantially and adversely alter his responsibilities;

fail to continue any compensation plan that constitutes a material portion of his compensation; or

change his primary employment location by more than 35 miles.

Following a qualifying termination, the change in control agreements for each named executive officer (other than Mr. Wilson whose change in control agreement that was in effect prior to his retirement on January 1, 2014, is described below) provide for (i) a lump sum payment to the named executive officer equal to two times (or, three times in the case of Mr. Will) the sum of his base salary and target annual incentive payment; (ii) welfare benefit continuation for a period of two years (or three years, in the case of Mr. Will) and outplacement services for a period of up to two years; and (iii) a pro-rata annual incentive payment for the year of termination, assuming target levels of performance or, if higher, actual year-to-date performance.

In addition, if the named executive officer is otherwise eligible to participate in our Old Retirement Plan (or, in the case of Messrs. Will and Kelleher, our New Retirement Plan), he will receive a cash

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payment equal to the actuarial value of two additional years (or, three additional years in the case of Mr. Will) of age and service credit under the plan and will be credited with two additional years (or, three additional years in the case of Mr. Will) of age and service credit under our Supplemental Benefit and Deferral Plan. If the named executive officer is not fully vested in his benefits under these plans, he will also receive a cash payment equal to his unvested benefits.

The named executive officer will also receive a cash payment equal to the contributions that we would have made on his behalf for a period of two years (or, three years in the case of Mr. Will) under our 401(k) Plan and the related amounts that we would have credited to his account balance under our Supplemental Benefit and Deferral Plan. If the named executive officer is not fully vested in his benefits under these plans, he will also receive a cash payment equal to his unvested benefits.

The named executive officer will not be obligated to seek other employment in mitigation of the payments and benefits to be provided, and no such other employment will reduce our obligation to make such payments and to provide such benefits to him under the agreements.

The change in control agreements of the named executive officers, other than Messrs. Will and Kelleher, further provide that, if any of the payments to the named executive officer become subject to the "golden parachute" excise tax imposed by Section 4999 of the Internal Revenue Code, the named executive officer will be entitled to receive an additional gross-up payment such that, after payment by him of all taxes, including any excise tax imposed upon the gross-up payment, he will receive the net after-tax benefit that he would have received had the excise tax not been imposed.

Each of the named executive officers will be required to sign a release of claims at the time of the qualifying termination as a condition to receiving any such payments or benefits from us under his change in control agreement.

In addition, upon a change in control (as defined in our Equity and Incentive Plans) the restrictions, limitations, and conditions applicable to outstanding restricted stock, stock options, and other plan-based awards will lapse, any performance goals will be deemed to be fully achieved, and the awards will become fully vested and exercisable, which for the annual incentive payment means payment at target-level performance, pro-rated for the portion of the year the executive officer was employed prior to the change in control, as set forth in the applicable incentive award letter.

As described above, as of his retirement effective January 1, 2014, Mr. Wilson is no longer covered under any change in control agreement with the company and, therefore, he is not entitled to any change in control benefits other than any benefits provided under the change in control provisions of our equity plans that govern equity awards generally. If Mr. Wilson had experienced a qualifying termination (as described below) on December 31, 2013, he would have been entitled to (i) a lump sum payment equal to three times the sum of his base salary and target annual incentive payment; (ii) welfare benefit continuation for a period of three years and outplacement services for a period of up to two years; (iii) a pro-rata annual incentive payment for the year of termination, assuming target levels of performance or, if higher, actual year-to-date performance; (iv) a cash payment equal to the actuarial value of three additional years of age and service credit under our Old Retirement Plan and our Supplemental Benefit and Deferral Plan; and (v) a cash payment equal to the contributions that we would have made on his behalf for a period of three years under our Company 401(k) Plan and the related amounts that we would have credited to his account balance under our Supplemental Benefit and Deferral Plan. Furthermore, if any payments under Mr. Wilson's change in control agreement would have become subject to the "golden parachute" excise tax imposed by Section 4999 of the Internal Revenue Code, he would have been entitled to receive an additional gross-up payment such that after payment by him of all taxes, including any excise tax imposed upon the gross-up payment, he would have received the same net after-tax benefit as if the excise tax had not been imposed.

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Assuming a change in control had occurred on December 31, 2013, with a transaction price equal to the closing price for our stock (\$233.04 per share) on the NYSE as of such date, each of the named executive officers would have been entitled to receive the following estimated severance benefits upon a qualifying termination of his employment on such date:

Name	Severance Amount <sup>(1)</sup> (\$)	Defined Benefit Pension Plan Enhancement <sup>(2)</sup> (\$)	Retirement Savings Plan Enhancement <sup>(3)</sup> (\$)	Early Vesting of Restricted Stock <sup>(4)</sup> (\$)	Early Vesting of Stock Options <sup>(5)</sup> (\$)	Other Change in Control Benefits <sup>(6)</sup> (\$)	Estimated Excise Tax Gross Up <sup>(7)</sup> (\$)	Total (\$)
W. Anthony Will	1,617,000		58,800	1,216,469	635,892	73,616		3,601,777
Stephen R. Wilson <sup>(8)</sup>	7,425,000		198,000	6,456,373	3,452,840	91,691		17,623,904
Dennis P. Kelleher	1,749,000		63,600	1,284,983	753,754	61,711		3,913,048
Bert A. Frost	1,551,000		56,400	1,216,469	635,893	73,046		3,532,808
Philipp P. Koch	1,485,000	274,811	54,000	1,042,854	549,334	39,876		3,445,875
Douglas C. Barnard	1,485,000		54,000	955,464	506,186	72,958		3,073,608

- (1) This amount represents a cash payment to the named executive officer equal to two times (or, in the case of Mr. Wilson, three times) the sum of his base salary and target annual incentive payment.
- (2) This amount represents the present value of two additional years (or, in the case of Mr. Wilson, three additional years) of age and service credit for the named executive officer under our Old Retirement Plan and our Supplemental Benefit and Deferral Plan. As of December 31, 2013, Mr. Wilson had already qualified for the maximum combined annual pension benefit of \$400,000 per year, based on the normal form of benefit, under our defined benefit pension plans. Messrs. Will, Kelleher, Frost and Barnard are ineligible for these enhanced defined benefit pension benefits since their employment commenced after our Old Retirement Plan had been closed to new participants on December 31, 2003.
- (3) This amount represents a cash payment to the named executive officer equal to the contributions that we would have made on his behalf for a period of two years (or, in the case of Mr. Wilson, three years), assuming each named executive officer contributed the maximum allowable amount under our 401(k) Plan and the related amounts we would have credited to his account balance under our Supplemental Benefit and Deferral Plan.
- (4) This amount represents the value attributable to the accelerated vesting of outstanding restricted stock awards held by the named executive officer, which is deemed to equal the market value on December 31, 2013 of the restricted stock that would otherwise have been unvested as of such date.
- (5) This amount represents the value attributable to the accelerated vesting of outstanding stock option awards held by the named executive officer, which is deemed to equal, for each stock option that would otherwise have been unvested as of such date, the amount by which (x) the aggregate market value on December 31, 2013 of the underlying stock exceeded (y) the aggregate exercise price of the stock option.
- (6) This amount represents the present value of the continuation of certain welfare benefits for the named executive officer for a period of two years (or, in the case of Mr. Wilson, three years) and the value of outplacement services for the named executive officer for a period of up to two years.
- (7) This amount represents an excise tax gross-up payment for the named executive officer such that, after payment by him of all taxes, including any excise tax imposed upon the gross-up payment, he will receive the net after-tax benefit he would have received had the excise tax not been imposed under Section 4999 of the Internal Revenue Code.

(8)

As of his retirement, effective January 1, 2014, Mr. Wilson is no longer covered under any change in control agreement with the company and, therefore, from and following such date, he is no longer entitled to any change in control benefits other than any benefits provided under the change in control provisions of our equity plans that govern equity awards generally.

Table of Contents**DIRECTOR COMPENSATION**

The following table sets forth cash and non-cash compensation with respect to the year ended December 31, 2013 for our non-employee directors. Mr. Wilson received no additional compensation for his service as a director or as the chairman of our Board in the year ended December 31, 2013.

Name	Fees Earned or Paid in Cash <sup>(1)</sup> (\$)	Dividends on Restricted Stock (\$)	Stock Awards <sup>(2)</sup> (\$)	Total (\$)
Robert C. Arzbaecher	92,850	1,352	119,934	213,211
William Davisson	85,775	1,352	119,934	205,711
Stephen A. Furbacher	99,925	1,352	119,934	220,286
Stephen J. Hagge	85,350	1,352	119,934	205,711
John D. Johnson	84,425	1,352	119,934	205,286
Robert G. Kuhbach	97,025	1,352	119,934	216,961
Edward A. Schmitt	92,425	1,352	119,934	212,786

(1) Amounts in this column represent fees that our non-employee directors earned during 2013 with respect to their annual cash retainers and meeting fees. Through May 14, 2013, each director received \$1,500 for each Board meeting attended in person (or \$500 per meeting for participation via conference call) and each Board committee member received \$1,500 for each committee meeting attended in person (or \$425 per meeting for participation via conference call). Effective as of May 14, 2013, the Board approved a revised annual cash retainer and discontinued the payment of meeting fees. Additional information with respect to the annual cash retainer is set forth below under "Annual Cash Retainer."

(2) Amounts in this column represent the grant date fair value computed in accordance with FASB ASC Topic 718 (without taking into account any estimate of forfeitures related to service-based vesting conditions) of the restricted stock awards that we granted to the non-employee directors during 2013 pursuant to our 2009 Equity and Incentive Plan. Our assumptions with respect to the FASB ASC Topic 718 valuation of these equity awards are described in the footnotes to our audited financial statements as of and for the year ended December 31, 2013. Additional information with respect to these restricted stock awards is set forth below under the heading "Annual Restricted Stock Grant."

**Annual Cash Retainer**

Effective as of May 14, 2013, each non-employee director, with the exception of Mr. Wilson, became entitled to an annual cash retainer of \$100,000, payable quarterly. As described above, the payment of meeting fees to non-employee directors has been discontinued. For his service as a director and non-executive chairman, Mr. Wilson will receive compensation in the amount of \$360,000 per year, payable quarterly, and will not receive any equity awards. The chairmen of the Board committees and the lead independent director will receive additional annual cash retainers in the following amounts, payable quarterly:

Audit committee chairman	\$ 15,000
Compensation committee chairman	\$ 10,000
Corporate governance and nominating committee chairman	\$ 10,000
Lead independent director	\$ 20,000

If the lead independent director is also the chairman of the corporate governance and nominating committee, he will receive only the lead independent director retainer.



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**Annual Restricted Stock Grant**

Each non-employee director will receive, upon joining the Board, a restricted stock grant with a fair market value of \$120,000, rounded to the nearest whole share. Thereafter, each continuing non-employee director, with the exception of Mr. Wilson, will receive an annual restricted stock grant with a fair market value of \$120,000, rounded to the nearest whole share, on the date of each annual meeting of the stockholders. Assuming continuing service as a non-employee director, all shares of restricted stock will vest on the earlier of (x) the date of the first annual meeting of the stockholders following the date of grant or (y) the first anniversary of the date of grant. Mr. Wilson's outstanding stock option and restricted stock awards will continue to vest during his continued service as a director.

**POLICY REGARDING RELATED PERSON TRANSACTIONS**

We recognize that transactions with related persons can present potential or actual conflicts of interest and create the appearance that our decisions are based on considerations other than the best interests of the company and its stockholders. Accordingly, as a general matter, it is our preference to avoid such transactions.

Nevertheless, we recognize that there are situations where related person transactions may be in, or not inconsistent with, the best interests of the company and its stockholders, including but not limited to situations where we may obtain products or services of a nature, quantity, or quality, or on other terms, that are not readily available from alternative sources, or when we provide products or services to related persons on an arm's length basis on terms comparable to those provided to unrelated third parties or on terms comparable to those provided to employees generally.

In order to deal with the potential conflicts inherent in such transactions, our audit committee has adopted a written policy regarding related person transactions. For the purposes of this policy, a "related person transaction" is a transaction, arrangement, or relationship (or any series of similar transactions, arrangements, or relationships) in which the company was, is, or will be a participant and the amount involved exceeds \$120,000, and in which any related person had, has, or will have a direct or indirect material interest, other than (a) transactions where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; (b) transactions involving services as a bank depository of funds, transfer agent, registrar, or trustee under a trust indenture, or similar services; (c) transactions in which the interest of the related person derives solely from his or her service as a director of another entity that is a party to the transaction; or (d) transactions in which the interest of the related person derives solely from his or her ownership of less than 10% of the equity interest in another entity (other than a general partnership interest) which is a party to the transaction.

In addition, transactions involving the purchase of products or services (other than personal or professional services) from an entity for which a director of the company or an immediate family member of a director serves as an executive officer shall not be considered to involve a material interest on the part of such director (and therefore shall not be considered related person transactions) if (i) the director did not participate in the decision on the part of the company to enter into such transactions, (ii) the transactions are made in the ordinary course of business and on substantially the same terms as those prevailing at the time for transactions with other unrelated third parties, and (iii) the amount paid in all transactions with any such entity in a twelve-month period is less than the greater of \$500,000 or 1% of such entity's consolidated gross revenues for the most recently completed fiscal year for which data is publicly available.

For purposes of the policy, a "related person" means:

any person who is, or at any time since the beginning of our last fiscal year was, a director or executive officer of the company or a nominee to become a director of the company;

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any person who is known to be the beneficial owner of more than 5% of any class of our voting securities;

any immediate family member of any of the foregoing persons; and

any firm, corporation, or other entity in which any of the foregoing persons is employed or is a general partner or principal or in a similar position or in which such person has a 5% or greater beneficial ownership interest.

Except as described below with respect to certain commercial transactions in the ordinary course of business, any proposed transaction with a related person shall be consummated or amended only if the following steps are taken:

The general counsel will assess whether the proposed transaction is a related person transaction for purposes of this policy.

If the general counsel determines that the proposed transaction is a related person transaction, the proposed transaction shall be submitted to the audit committee for consideration at the next committee meeting or, in those instances in which the general counsel, in consultation with the chief executive officer or the chief financial officer, determines that it is not practicable or desirable for us to wait until the next committee meeting, to the chairman of the audit committee (who has been delegated authority to act between committee meetings).

The audit committee, or where submitted to the chairman of the committee, the chairman, shall consider all of the relevant facts and circumstances available to the committee or the chairman, including (if applicable) but not limited to: (i) the benefits to the company; (ii) the impact on a director's independence in the event the related person is a director, an immediate family member of a director, or an entity in which a director is a partner, stockholder, or executive officer; (iii) the availability of other suppliers or customers for comparable products or services; (iv) the terms of the transaction; and (v) the terms available to unrelated third parties or to employees generally.

The committee (or the chairman) shall approve only those related person transactions that are in, or are not inconsistent with, the best interests of the company and its stockholders, as the committee (or the chairman) determines in good faith.

The committee or chairman, as applicable, shall convey the decision to the general counsel, who shall convey the decision to the appropriate persons within the company.

At the audit committee's first meeting of each fiscal year, the committee shall review any previously approved related person transactions that remain ongoing and have a remaining term of more than six months or remaining amounts payable to or receivable from the company of more than \$120,000. Based on all relevant facts and circumstances, taking into consideration the company's contractual obligations, the committee shall determine if it is in the best interests of the company and its stockholders to continue, modify, or terminate the related person transaction. At its first meeting in 2014, the audit committee determined that the company did not engage in any related person transactions in 2013.

No member of the audit committee shall participate in any review, consideration, or approval of any related person transaction with respect to which such member or any of his or her immediate family members is the related person.

Sales of our products and services to related persons in the ordinary course of business, at prices and on terms consistent with those offered to similarly situated customers in our industry in transactions between unaffiliated parties will generally not be subject to the approval procedures described above; provided, however, that any (i) modification or amendment of a multi-year supply contract or (ii) entry into, modification, or amendment of a similar long-term supply contract with any related person will be

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subject to the same procedures under this policy as are applicable to any other related person transactions.

**PROPOSAL 8: RATIFICATION OF SELECTION OF INDEPENDENT AUDITOR**

The audit committee has selected KPMG as the independent registered public accounting firm to perform the audit of our financial statements and our internal control over financial reporting for 2014. KPMG was our independent registered public accounting firm for the year ended December 31, 2013.

KPMG representatives are expected to attend the Annual Meeting. They will have an opportunity to make a statement if they desire to do so and will be available to respond to appropriate stockholder questions.

We are asking our stockholders to ratify the selection of KPMG as our independent registered public accounting firm for 2014. Although ratification is not required by our Bylaws or otherwise, the Board is submitting the selection of KPMG to our stockholders for ratification as a matter of good corporate practice. Should the stockholders fail to provide such ratification, the audit committee will reconsider its approval of KPMG as our independent registered public accountants for 2014. Even if the selection is ratified, the audit committee in its discretion may select a different registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of CF Industries and its stockholders.

Unless otherwise instructed, we will vote all proxies we receive FOR ratifying the selection of KPMG as the company's independent registered public accounting firm for 2014.

**The Board unanimously recommends that you vote FOR the proposal to ratify the selection of KPMG as our independent registered public accounting firm for 2014.**

**AUDIT AND NON-AUDIT FEES**

On behalf of CF Industries and its affiliates, the audit committee retained KPMG to audit our consolidated financial statements for 2013. In addition, the audit committee retained KPMG, as well as other accounting firms, to provide other auditing and advisory services in 2013.

The aggregate fees for professional services provided by KPMG with respect to these various services for 2013 and 2012 were:

	2013	2012
Audit fees <sup>(1)</sup>	\$ 2,796,500	\$ 2,783,200
Audit-related fees <sup>(2)</sup>	29,500	40,000
Tax fees		
All other fees		
	\$ 2,826,000	\$ 2,823,300

(1) Audit fees consisted principally of audit and review work performed on the consolidated financial statements, as well as work generally only the independent registered public accounting firm can reasonably be expected to provide, such as statutory audits and review of documents filed with the SEC.

(2) Audit-related fees were principally for audits of employee benefit plans and, in 2012, a review of the audit programs utilized by the company's internal audit function.

**PRE-APPROVAL OF AUDIT AND NON-AUDIT SERVICES**

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Consistent with SEC policies regarding auditor independence, the audit committee has responsibility for appointing, setting the compensation of, and overseeing the work of the independent registered

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public accounting firm. In recognition of this responsibility, the audit committee has established a policy to pre-approve all audit and permissible non-audit services provided by the independent registered public accounting firm.

Prior to engagement of the independent registered public accounting firm for the next year's audit, management will submit a list of services and related fees expected to be rendered during that year within each of four categories of services to the audit committee for approval.

*Audit services* include audit and review work performed on the financial statements and audit work related to internal control over financial reporting, as well as work that generally only the independent registered public accounting firm can reasonably be expected to provide, including statutory audits and review of documents filed with the SEC.

*Audit-related services* are for assurance and related services that are traditionally performed by the independent registered public accounting firm, including due diligence related to mergers and acquisitions, employee benefit plan audits, and consultation regarding financial accounting and reporting standards.

*Tax services* include all services, except those services specifically related to the audit of the financial statements, performed by the independent registered public accounting firm's tax personnel, including tax compliance, tax planning, and other tax advice.

*All other services* are those services not captured in the audit, audit-related, or tax categories. The company generally doesn't request such services from the independent registered public accounting firm.

Prior to engagement, the audit committee pre-approves independent registered public accounting firm services within each category. The fees are budgeted and the audit committee requires the independent registered public accounting firm and management to report actual fees versus the budget periodically throughout the year by category of service. During the year, circumstances may arise when it may become necessary to engage the independent registered public accounting firm for additional services not contemplated in the original pre-approval categories. In those instances, the audit committee requires specific pre-approval before engaging the independent registered public accounting firm.

The audit committee has delegated specific pre-approval authority to the chairman of the audit committee provided that the estimated fee for any such engagement does not exceed \$100,000. The chairman of the audit committee must report, for informational purposes only, any pre-approval decisions to the audit committee at its next scheduled meeting.

**AUDITOR INDEPENDENCE**

We understand the need for KPMG to maintain objectivity and independence in its audit of our financial statements and our internal control over financial reporting. To minimize relationships that could appear to impair the objectivity of KPMG, our audit committee has restricted the non-audit services that KPMG may provide to us primarily to audit-related services and tax services. The committee also has determined that we will only obtain these non-audit services from KPMG when the services offered by KPMG are more effective or economical than services available from other service providers, and, to the extent possible, only after competitive bidding. It is the committee's goal that the fees we pay KPMG for non-audit services should not exceed the audit fees paid to KPMG.

Our audit committee has adopted restrictions on our hiring of any KPMG partner, director, manager, staff, advising member of the department of professional practice, reviewing actuary, reviewing tax professional, and any other persons having responsibility for providing audit assurance on any aspect of their certification of our financial statements. KPMG partners assigned to our audit rotate at least every five years, in accordance with professional standards.

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**AUDIT COMMITTEE REPORT**

The audit committee is responsible for monitoring the integrity of our consolidated financial statements, our system of internal controls, and the independence and performance of our internal and independent auditors. The audit committee is also responsible for the selection, evaluation, and oversight of our independent auditors. The audit committee is composed of four non-management directors and operates under a written charter adopted by our Board. Each member of the audit committee is independent within the meaning of the rules of the corporate governance standards of the NYSE applicable to audit committee members.

Management is responsible for the financial reporting process, including establishing and maintaining adequate internal control over financial reporting, and for the preparation of consolidated financial statements in accordance with generally accepted accounting principles. KPMG, our independent auditor, is responsible for auditing the financial statements. The audit committee's responsibility is to monitor and review these processes. The audit committee relies on the accuracy and completeness of the information provided to it and on the representations made by management and KPMG.

During 2013, the audit committee held nine meetings and met in executive session at each of the five meetings that were held in person and at three of the four telephonic meetings. The audit committee also reviewed and discussed with management and KPMG the audited consolidated financial statements of CF Industries for the year ended December 31, 2013. The audit committee also discussed with KPMG the matters required to be discussed by Statement of Auditing Standards No. 16 (Communication with Audit Committees), the standards of the Public Company Accounting Oversight Board, and Rule 2-07 of Regulation S-X of the Securities Act of 1933, as amended. In addition, the audit committee received the written disclosures and the letter from KPMG required by the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence and discussed with KPMG its independence. The audit committee also considered whether the provision of non-audit services by KPMG was compatible with maintaining its independence.

Based on its review and the foregoing meetings, discussions, and reports, and subject to the limitations on its role and responsibilities referred to above and in the audit committee charter, the audit committee recommended to the Board that the audited consolidated financial statements of CF Industries for the year ended December 31, 2013, as audited by KPMG, be included in our Annual Report on Form 10-K for filing with the SEC. The audit committee selected KPMG as our independent auditor for 2014 and recommended to the Board that the Board seek stockholder ratification of the selection of KPMG.

Robert G. Kuhbach (Chairman)  
Robert C. Arzbaecher  
William Davisson  
Stephen J. Hagge

**ADDITIONAL INFORMATION**

**Submission of Future Stockholder Proposals**

Under SEC rules, a stockholder who intends to present a proposal at the next annual meeting of stockholders and who wishes the proposal to be included in our proxy statement for that meeting pursuant to Rule 14a-8 under the Exchange Act must submit the proposal in writing to our corporate secretary at the address on the Notice of Annual Meeting accompanying this Proxy Statement. The proposal must be received no later than \_\_\_\_\_, 2014 (120 days before \_\_\_\_\_, 2015, the one year anniversary of the anticipated mailing date of this proxy statement).

Our Bylaws require that written notice of (i) proposals intended to be presented by a stockholder at the next annual meeting, but that are not intended for inclusion in our proxy statement for that

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meeting pursuant to Rule 14a-8, and (ii) nominees for the election of directors intended to be made by a stockholder at the next annual meeting be delivered to our corporate secretary at the address on the Notice of Annual Meeting accompanying this Proxy Statement no earlier than \_\_\_\_\_, 2015 and no later than \_\_\_\_\_, 2015. Such advance notice deadline will also be the deadline for "timely" proposals made in accordance with Rule 14a-4(c) under the Exchange Act. To be in proper written form, such a notice must set forth the information prescribed in our Bylaws. You can obtain a copy of our Bylaws by writing our corporate secretary at the address on the Notice of Annual Meeting accompanying this Proxy Statement.

**Cost of Annual Meeting and Proxy Solicitation**

We pay the cost of the Annual Meeting and the cost of soliciting proxies. In addition to soliciting proxies by mail, we may solicit proxies by personal interview, telephone, and similar means. None of our directors, officers, and employees will be specially compensated for these activities. We also intend to request that brokers, banks, and other nominees solicit proxies from their principals, and we will reimburse the brokers, banks, and other nominees for certain expenses they incur for such activities.

We have also retained Innisfree M&A Incorporated ("Innisfree") for consulting and solicitation services in connection with the Annual Meeting, for which Innisfree is anticipated to receive a fee of approximately \$25,000. We have also agreed to reimburse Innisfree for out-of-pocket expenses and to indemnify Innisfree against certain liabilities and expenses, including legal fees and related charges.

**Annual Report on Form 10-K**

**A copy of our Annual Report on Form 10-K for the fiscal year ended December 31, 2013, required to be filed with the SEC, without exhibits, will be furnished without charge to any stockholder of record or beneficial owner of common stock upon written request to our corporate secretary at the address on the Notice of Annual Meeting accompanying this Proxy Statement.**

, 2014

**PROPOSED FORM OF  
SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
CF INDUSTRIES HOLDINGS, INC.**

**Explanatory Note**

This proposed form of Second Amended and Restated Certificate of Incorporation of CF Industries Holdings, Inc. gives effect to amendments to the Charter related to Proposals 2, 3 and 4, the elimination of Supermajority Voting Provisions, and Proposal 5, to grant holders of not less than 25% of our outstanding common stock the right to call a special meeting of stockholders. The actual Second Amended and Restated Certificate of Incorporation filed with the Secretary of State of Delaware will reflect only those amendments approved by stockholders at the Annual Meeting.

Prior amendments to the Charter approved in accordance with Delaware law and incorporated into this proposed form of Second Amended and Restated Certificate of Incorporation are not reflected in the blackline.

**PROPOSED FORM OF  
SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
CF INDUSTRIES HOLDINGS, INC.**

Pursuant to Sections ~~241~~242 and 245 of the  
Delaware General Corporation Law

CF Industries Holdings, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify as follows:

1. The name of the corporation is CF Industries Holdings, Inc. (the "Corporation"). The Corporation was originally incorporated under the name CF Industries Holdings, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 15, 2005.
- ~~2. The Corporation has not received payment for any of its stock.~~
- ~~3. This Second Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate of Incorporation") was duly adopted by the Board of Directors of the Corporation (the "Board of Directors") and by the stockholders of the Corporation in accordance with Sections ~~241~~242 and 245 of the DGCL.~~
- ~~3. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the certificate of incorporation of the Corporation, as heretofore amended or supplemented.~~
4. The text of the Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the Corporation is CF Industries Holdings, Inc.



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ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle. The name of its registered agent is the Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

ARTICLE IV

(A) *Authorized Capital Stock.* The total number of shares of stock which the Corporation shall have authority to issue is 550,000,000 shares of capital stock, consisting of (i) 500,000,000 shares of common stock, par value \$0.01 per share (the "Common Stock") and (ii) 50,000,000 shares of preferred stock, par value \$0.01 per share (the "Preferred Stock").

(B) *Preferred Stock.* Except as provided in Article IV(C) with respect to Series A Junior Participating Preferred Stock (as hereinafter defined), the Board of Directors is hereby expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

(C) *Series A Junior Participating Preferred Stock.* There is hereby created a series of Preferred Stock, designated Series A Junior Participating Preferred Stock having the terms, rights and privileges set forth in Exhibit A attached hereto.

(D) *Power to Sell and Purchase Shares.* Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

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ARTICLE V

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(A) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(B) The Board of Directors shall consist of not less than 3 or more than 15 members, the exact number of which shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the entire Board of Directors.

(C) The Board of Directors shall be and is divided into three classes designated: Class I, Class II and Class III, which shall be as nearly equal in number as possible. Each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting at which the director was elected. Notwithstanding the foregoing, (1) at the 2013 annual meeting of stockholders, the directors whose terms expire at that meeting shall be elected to hold office for a one-year term expiring at the 2014 annual meeting of stockholders; (2) at the 2014 annual meeting of stockholders, the directors whose terms expire at that meeting shall be elected to hold office for a one-year term expiring at the 2015 annual meeting of stockholders; and (3) at the 2015 annual meeting of stockholders and each annual meeting of stockholders thereafter, all directors shall be elected for a one-year term expiring at the next annual meeting of stockholders. Pursuant to such procedures, effective as of the 2015 annual meeting of stockholders, the Board of Directors will no longer be classified under Section 141(d) of the DGCL and directors shall no longer be divided into three classes. Prior to the 2015 annual meeting of stockholders, if the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible.

(D) A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

(E) Subject to the terms of any one or more classes or series of Preferred Stock, any vacancy on the Board of Directors that results from an increase in the number of directors may only be filled by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors may only be filled by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. Until the 2015 annual meeting of stockholders, (i) any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class, and (ii) any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his predecessor. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, (x) until the 2015 annual meeting of stockholders and in accordance with Section 141(k)(1) of the DGCL, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of ~~at least two thirds of the voting power of the Corporation's then issued and outstanding capital stock~~ a majority of the shares then entitled to vote ~~generally~~ at an election of directors of the Corporation and (y) from and after the 2015 annual meeting of stockholders, any director, or the entire Board of Directors, may be removed from office at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of

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Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation applicable thereto, and such directors so elected shall not be divided into classes pursuant to this *Article V* unless expressly provided by such terms.

(F) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided, however*, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

ARTICLE VI

No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. If the DGCL is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the DGCL, as so amended. Any repeal or modification of this *Article VI* shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE VII

The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this *Article VII* shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this *Article VII* to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this *Article VII* shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the By-Laws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of this *Article VII* shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

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ARTICLE VIII

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and the ability of the stockholders to consent in writing to the taking of any action is hereby specifically denied.

ARTICLE IX

(A) Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

(B) Unless otherwise required by law, special meetings of stockholders, ~~for any purpose or purposes,~~ may be called by (i) the Chairman of the Board of Directors, if there be one, (ii) the President or (iii) the Board of Directors. ~~The ability of the stockholders to call, and (iv) subject to the provisions of the Corporation's By-Laws, a special meeting of stockholders is hereby specifically denied shall be called by the Secretary of the Corporation upon written request of the holders of record of at least twenty-five percent (25%) of the voting power of all outstanding shares of Common Stock entitled to vote at such meeting, such voting power to be calculated and determined in the manner specified, and with any limitations as may be set forth, in the Corporation's By-Laws. Subject to the rights of the holders of any shares of Preferred Stock, special meetings of stockholders may not be called by any other person or persons. At such special meeting of stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as were specified in the notice thereof.~~

ARTICLE X

In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the Corporation's By-Laws. The affirmative vote of at least a majority of the entire Board of Directors shall be required to adopt, amend, alter, change or repeal the Corporation's By-Laws. The Corporation's By-Laws also may be adopted, amended, altered, changed or repealed by the affirmative vote of the holders of ~~at least two thirds~~ a majority of the voting power of the Corporation's then issued and outstanding capital stock entitled to vote generally at an election of directors of the Corporation.

ARTICLE XI

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed in this Amended and Restated Certificate of Incorporation, the Corporation's By-Laws or the DGCL, and all rights herein conferred upon stockholders are granted subject to such reservation; ~~provided, however, that, notwithstanding any other provision of this Amended and Restated Certificate of Incorporation (and in addition to any other vote that may be required by law), the affirmative vote of the holders of at least two thirds of the voting power of the Corporation's then issued and outstanding capital stock entitled to vote generally at an election of directors of the Corporation shall be required to amend, alter, change or repeal, or to adopt any provision inconsistent with Articles V, VIII, IX and X of this Amended and Restated Certificate of Incorporation or this Article XI.~~

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IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this     day of     , 2014.

CF INDUSTRIES HOLDINGS, INC.

By: \_\_\_\_\_

Name: Douglas C. Barnard  
Title: Senior Vice President, General Counsel, and Secretary

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**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

Section 1. *Designation and Amount.* The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" and the number of shares constituting such series shall be 500,000.

Section 2. *Dividends and Distributions.*

(a) Subject to the prior and superior rights of the holder of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the 15th day of May, August, November and February in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$0.01 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$0.01 per share, of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. In the event the Corporation shall at any time after August 10, 2005 (the "Effective Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in Paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$0.01 per share on the Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and

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payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

Section 3. *Voting Rights.* The holders of shares of Series A Junior Participating Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Effective Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six (6) quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, all holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) with dividends in arrears in an amount equal to six (6) quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two (2) directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that neither such voting right nor the right of the holders of any other series of Preferred Stock, if any, to increase, in certain cases, the authorized number of directors shall be exercised unless the holders of ten percent (10%) in number of shares of Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Preferred Stock of such voting right. At any meeting at which the holders of Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting as a class, to elect directors to fill such vacancies, if any, in the Board of Directors as may then exist up to two (2) directors or, if such right is exercised at an annual meeting, to elect two (2) directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Preferred Stock shall have the right to make such increase in the number of directors as shall be necessary to permit the election by them of the required number. After the holders of the Preferred Stock shall have exercised their right to elect directors in any default period and during the continuance of such period, the number of directors shall not be increased or decreased except by vote of the holders of Preferred Stock as herein provided or pursuant to

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the rights of any equity securities ranking senior to or pari passu with the Series A Junior Participating Preferred Stock.

(iii) Unless the holders of Preferred Stock shall, during an existing default period, have previously exercised their right to elect directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Preferred Stock, which meeting shall thereupon be called by the President, a Vice-President or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Preferred Stock are entitled to vote pursuant to this Paragraph (C)(iii) shall be given to each holder of record of Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding. Notwithstanding the provisions of this Paragraph (C)(iii), no such special meeting shall be called during the period within 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, the holders of Common Stock, and other classes of stock of the Corporation if applicable, shall continue to be entitled to elect the whole number of directors until the holders of Preferred Stock shall have exercised their right to elect two (2) directors voting as a class, after the exercise of which right (x) the directors so elected by the holders of Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in Paragraph (C)(ii) of this Section 3) be filled by vote of a majority of the remaining directors theretofore elected by the holders of the class of stock which elected the director whose office shall have become vacant. References in this Paragraph (C) to directors elected by the holders of a particular class of stock shall include directors elected by such directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Preferred Stock as a class to elect directors shall cease, (y) the term of any directors elected by the holders of Preferred Stock as a class shall terminate, and (z) the number of directors shall be such number as may be provided for in the certificate of incorporation or by-laws irrespective of any increase made pursuant to the provisions of Paragraph (C)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the certificate of incorporation or by-laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining directors.

(D) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. *Certain Restrictions.*

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not

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(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. *Reacquired Shares.* Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. *Liquidation, Dissolution or Winding Up.* (A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received an amount equal to \$1,000 per share of Series A Participating Preferred Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in subparagraph (C) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common

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Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) In the event the Corporation shall at any time after the Effective Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. *Consolidation, Merger, etc.* In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Effective Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Junior Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. *No Redemption.* The shares of Series A Junior Participating Preferred Stock shall not be redeemable.

Section 9. *Ranking.* The Series A Junior Participating Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

Section 10. *Amendment.* At any time when any shares of Series A Junior Participating Preferred Stock are outstanding, neither the Amended and Restated Certificate of Incorporation of the Corporation nor this Certificate of Designation shall be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

Section 11. *Fractional Shares.* Series A Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Junior Participating Preferred Stock.

**FORM OF AMENDMENT TO CF INDUSTRIES HOLDINGS, INC. AMENDED AND RESTATED BYLAWS TO GRANT HOLDERS OF NOT LESS THAN 25% OF OUR OUTSTANDING COMMON STOCK THE RIGHT TO CALL A SPECIAL MEETING OF STOCKHOLDERS**

**Article II, Section 3. *Special Meetings.***

Unless otherwise required by law, Special Meetings of Stockholders may be called by (i) the Chairman of the Board of Directors, if there be one, (ii) the President or (iii) the Board of Directors, and (iv) subject to the provisions of this Section 3 and all other applicable sections of the Bylaws, a Special Meeting shall be called by the Secretary of the Corporation upon written request in proper form (a "Special Meeting Request") to the Secretary of one or more record holders of common stock of the Corporation representing at least twenty-five percent (25%) of the voting power of all outstanding shares of common stock which shares are determined to be "Net Long Shares" in accordance with this Section 3 (the "Requisite Percentage"). Subject to the rights of the holders of any shares of preferred stock, Special Meetings of the Stockholders may not be called by any other person or persons.

For purposes of this Section 3 and for determining the Requisite Percentage, Net Long Shares shall be limited to the number of shares of common stock beneficially owned, directly or indirectly, by any stockholder or beneficial owner that constitute such person's net long position as defined in Rule 14e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provided that (x) for purposes of such definition (i) the date the tender offer is first announced or otherwise made known by the bidder to holders of the security to be acquired shall instead be the date for determining and/or documenting a stockholder's or beneficial owner's Net Long Shares and (ii) the reference to the highest tender price shall refer to the closing sales price of the Corporation's common stock on the New York Stock Exchange (or any successor thereto) on such date (or, if such date is not a trading day, the next succeeding trading day), (iii) the person whose securities are the subject of the offer shall refer to the Corporation and (iv) a "subject security" shall refer to the outstanding common stock of the Corporation; and (y) to the extent not covered by such definition, the net long position of such holder shall be reduced by any shares as to which such person does not, at the time the Special Meeting Request is delivered to the Corporation, have the right to vote or direct the vote at the Special Meeting or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. In addition, to the extent any affiliates of the Requesting Stockholder (as defined below) are acting in concert with the Requesting Stockholder with respect to the calling of the Special Meeting, the determination of Net Long Shares may include the effect of aggregating the Net Long Shares (including any negative number) of such affiliate or affiliates. Whether shares constitute "Net Long Shares" shall be decided by the Board of Directors in its reasonable determination.

A Special Meeting Request must be delivered to or mailed to the attention of the Secretary at the principal executive offices of the Corporation. To be valid and in proper written form, a Special Meeting Request must be signed and dated by each stockholder of record submitting the Special Meeting Request and by each of the beneficial owners, if any, on whose behalf the Special Meeting Request is being made (each such record owner and beneficial owner, a "Requesting Stockholder"), and include (i) a statement of the specific purpose(s) of the Special Meeting and the matters proposed to be acted on at the Special Meeting, the text of any proposal or business (including the text of any resolutions proposed for consideration, and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the text of the proposed amendment), the reasons for conducting such business at the Special Meeting, and any material interest in such business of each Requesting Stockholder; (ii) in the case of any director nominations proposed to be presented at the

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Special Meeting, the information required by clauses (a)(i) through (a)(vi) of the fourth paragraph of Article II, Section 5 of these Bylaws<sup>1</sup> and clauses (b)(i) through (b)(vi) and clause (b)(xi) of the fourth paragraph of Article II, Section 5 of these Bylaws, including with respect to each Requesting Stockholder;<sup>2</sup> (iii) in the case of any matter (other than a director nomination) proposed to be conducted at the Special Meeting, the information required by clauses (i) through (vi) and clause (x) of the fourth paragraph of Article II, Section 4 of these Bylaws, including with respect to each Requesting Stockholder;<sup>3</sup> (iv) a representation that each Requesting Stockholder, or one or more representatives of each such stockholder, intends to appear in person or by proxy at the Special Meeting to present the proposal(s) or business to be brought before the Special Meeting; (v) a representation as to whether the Requesting Stockholders intend, or are part of a group that intends, to solicit proxies with respect to the proposals or business to be presented at the Special Meeting; (vi) an agreement by the Requesting Stockholders to notify the Corporation promptly in the event of any decrease in the number of Net Long Shares held by the Requesting Stockholders following the delivery of such Special Meeting Request and prior to the Special Meeting and an acknowledgement that any such decrease shall be deemed to be a revocation of such Special Meeting Request to the extent of such reduction; and (vii) documentary evidence that the Requesting Stockholders own the Requisite Percentage as of the date on which the Special Meeting Request is delivered to the Secretary; provided, however, that if the stockholder(s) of record submitting the Special Meeting Request are not the beneficial owners of the shares representing the Requisite Percentage, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary within ten (10) days after the date on which the Special Meeting Request is delivered to the Secretary) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own the Requisite Percentage as of the date on which such Special Meeting Request is delivered to the Secretary. In addition, each Requesting Stockholder shall promptly provide any other information reasonably requested by the Corporation.

<sup>1</sup> Clauses (a)(i) through (a)(vi) of the fourth paragraph of Article II, Section 5 of the Bylaws, require, with respect to each person whom the stockholder proposes to nominate for election as a director: (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iv) the nominee holder for, and number of, any shares owned beneficially but not of record by such person, (v) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation and (vi) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

<sup>2</sup> Clauses (b)(i) through (b)(vi) and clause (b)(xi) of the fourth paragraph of Article II, Section 5 of the Bylaws, require, with respect to each Requesting Stockholder: (i) the name and address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iii) the nominee holder for, and number of, any shares owned beneficially but not of record by such person, (iv) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation,

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(v) a description of all agreements, arrangements or understandings between or among such persons or any other person (including their names) pursuant to which the nominations are to be made by the stockholder, (vi) a description of any material interest of such person in such nominations, including any anticipated benefit to such person therefrom and (xi) any other information relating to such stockholder or any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

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Clauses (i) through (vi) and clause (x) of the fourth paragraph of Article II, Section 4 of the Bylaws, require, with respect to each Requesting Stockholder: (i) the name and address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iii) the nominee holder for, and number of, any shares owned beneficially but not of record by such person, (iv) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation, (v) a description of all agreements, arrangements or understandings between or among such persons or any other person (including their names) in connection with the proposal of such business by such stockholder, (vi) a description of any material interest of such person in such business and (x) any other information relating to such stockholder or any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder.

The Corporation will provide the Requesting Stockholders with notice of the record date for the determination of stockholders entitled to vote at the Special Meeting or otherwise publicly disclose such date. Each Requesting Stockholder is required to update the notice delivered pursuant to this Section 3 not later than ten (10) business days after such record date to provide any material changes in the foregoing information as of such record date and, with respect to the information required under clause (vii) of the previous paragraph, also as of a date not more than five (5) business days before the scheduled date of the Special Meeting as to which the Special Meeting Request relates.

In determining whether a Special Meeting has been requested by stockholders holding in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary of the Corporation will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the Special Meeting and substantially the same matters proposed to be acted on at the Special Meeting (in each case as determined in good faith by the Board of Directors), and (ii) such Special Meeting Requests have been delivered to the Secretary of the Corporation within sixty (60) days of the earliest dated Special Meeting Request.

A Special Meeting Request shall not be valid, and a special meeting requested by stockholders shall not be held, if (i) the Special Meeting Request does not comply with this Section 3; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is delivered during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of the next annual meeting; (iv) an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item"), other than the election or removal of director(s), was presented at an annual or Special Meeting held not more than twelve (12) months before the Special Meeting Request is delivered; (v) the Special Meeting Request relates to the election or removal of director(s) and the election or removal of

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director(s) was presented at an Annual Meeting of Stockholders or Special Meeting held not more than ninety (90) days before the Special Meeting Request is delivered; (vi) a Similar Item, including the election or removal of director(s), is included in the Corporation's notice of meeting as an item of business to be brought before an Annual Meeting of Stockholders or Special Meeting that has been called but not yet held or that is called for a date within one-hundred and twenty (120) days of the receipt by the Corporation of a Special Meeting Request; or (vii) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law. The Board of Directors shall determine in good faith whether all requirements set forth in this Section 3 have been satisfied and such determination shall be binding on the Corporation and its stockholders.

Except as otherwise provided in this Article II, Section 3, a Special Meeting held following a Special Meeting Request shall be held at such time and place, either within or without the State of Delaware, as may be fixed by the Board of Directors.

A Requesting Stockholder may revoke a Special Meeting Request by written revocation delivered to Secretary at the principal executive offices of the Corporation at any time prior to the Special Meeting. If, following such revocation (or deemed revocation pursuant to clause (vi) of the third paragraph of this Section 3), there are unrevoked requests from Requesting Stockholders holding, in the aggregate, less than the Requisite Percentage, the Board of Directors, in its discretion, may cancel the Special Meeting.

If none of the Requesting Stockholders appear or send a duly authorized agent to present the business to be presented for consideration specified in the Special Meeting Request, the Corporation need not present such business for a vote at the Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

Business transacted at any Special Meeting shall be limited to (i) the purpose(s) stated in the valid Special Meeting Request for such Special Meeting and (ii) any additional matters the Board of Directors determines to submit to the stockholders at such Special Meeting. The chairman of a Special Meeting shall determine all matters relating to the conduct of the Special Meeting, including, without limitation, determining whether to adjourn the Special Meeting and whether any nomination or other item of business has been properly brought before the Special Meeting in accordance with these Bylaws. If the chairman of a Special Meeting determines that business was not properly brought before the Special Meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

**CF INDUSTRIES HOLDINGS, INC.  
2014 EQUITY AND INCENTIVE PLAN**

1. *Purpose; Types of Awards; Construction.*

The purposes of the CF INDUSTRIES HOLDINGS, INC. 2014 Equity and Incentive Plan (the "Plan") are to promote the interests of the Company and its Subsidiaries and the stockholders of the Company by providing officers, employees, consultants and independent contractors (including non-employee directors) of the Company and its Subsidiaries with appropriate incentives and rewards to encourage them to enter into and continue in the employ or service of the Company or its Subsidiaries, to acquire a proprietary interest in the long-term success of the Company and to reward the performance of individuals in fulfilling their personal responsibilities for long-range and annual achievements. The Plan provides for the grant of options (including "incentive stock options" and "nonqualified stock options"), stock appreciation rights, restricted stock, restricted stock units and other stock- or cash-based awards. The Plan is designed so that Awards granted hereunder intended to comply with the requirements for "performance-based compensation" under Section 162(m) of the Code may comply with such requirements, and the Plan and Awards shall be interpreted in a manner consistent with such requirements.

2. *Definitions.*

For purposes of the Plan, the following terms shall be defined as set forth below:

- (a) "Annual Incentive Program" means the program described in Section 6(c) hereof.
- (b) "Award" means any Option, SAR, Restricted Stock, Restricted Stock Unit or Other Stock-Based Award or Other Cash-Based Award granted under the Plan.
- (c) "Award Agreement" means any written agreement, contract, notice or other instrument or document evidencing an Award.
- (d) "Board" means the Board of Directors of the Company.
- (e) A "Change in Control" shall be deemed to have occurred if an event set forth in any one of the following paragraphs shall have occurred:
  - (i) any Person is or becomes the Beneficial Owner (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or any of its affiliates) representing 25% or more of the combined voting power of the Company's then outstanding securities; or
  - (ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date this Plan is approved by the Company's stockholders, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (2/3<sup>rd</sup>) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended; or
  - (iii) there is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation, other than a merger or

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consolidation immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the Board of the entity surviving such merger or consolidation or, if the Company or the entity surviving such merger is then a subsidiary, the ultimate parent thereof; or

(iv) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for a sale or disposition by the Company of all or substantially all of the Company's assets, other than (a) a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 60% of the combined voting power of the voting securities of which are owned by stockholders of the Company following the completion of such transaction in substantially the same proportions as their ownership of the Company immediately prior to such sale or (b) a sale or disposition by the Company of all or substantially all of the Company's assets immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the board of directors of the entity to which such assets are sold or disposed or, if such entity is a subsidiary, the ultimate parent thereof.

Notwithstanding the foregoing or anything to the contrary herein, (i) a "Change in Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions and (ii) to the extent required to avoid the imposition of accelerated taxation and/or tax penalties under Section 409A of the Code, no Change in Control shall be deemed to occur unless such event constitutes a change in control event (as determined in accordance with Section 409A of the Code).

(f) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(g) "Committee" shall mean, at the discretion of the Board, a Committee of the Board, which shall consist of two or more persons, each of whom, unless otherwise determined by the Board, is an "outside director" within the meaning of Section 162(m) of the Code and a "nonemployee director" within the meaning of Rule 16b-3.

(h) "Company" means CF INDUSTRIES HOLDINGS, INC., a corporation organized under the laws of the State of Delaware, or any successor corporation.

(i) "Consultant" means any person who is engaged by the Company or a Subsidiary to render consulting or advisory services and is compensated for such services.

(j) "Continuous Service" means that the Grantee's service with the Company or a Subsidiary, whether as an employee, consultant or independent contractor (including non-employee directors) is not interrupted or terminated. A change in the capacity in which the Grantee renders service to the Company or a Subsidiary as an employee, director, consultant or independent contractor, provided that there is no interruption or termination of the Grantee's services with the Company or a Subsidiary in any of the foregoing capacities, shall not terminate a Grantee's Continuous Service.

(k) "Covered Employee" shall have the meaning set forth in Section 162(m)(3) of the Code.

(l) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and as now or hereafter construed, interpreted and applied by regulations, rulings and cases.

(m) "Fair Market Value" means, with respect to Stock or other property, the fair market value of such Stock or other property determined by such methods or procedures as shall be

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established from time to time by the Committee. Unless otherwise determined by the Committee in good faith, the per share Fair Market Value of Stock as of a particular date shall mean (i) the closing reported sales price per share of Stock on the national securities exchange on which the Stock is principally traded, for the relevant date (or, if there is no such closing sales price reported on the relevant date, then on the first day thereafter on which a closing sales price is reported), or (ii) if the shares of Stock are then traded in an over-the-counter market, the average of the closing reported bid and asked prices for the shares of Stock in such over-the-counter market for the relevant date (or, if there are no such closing bid and asked prices reported on the relevant date, then on the first day thereafter on which closing bid and asked prices are reported), or (iii) if the shares of Stock are not then listed on a national securities exchange or traded in an over-the-counter market, such value as the Committee, in its sole discretion, shall determine.

(n) "Grantee" means an employee, consultant or independent contractor (including non-employee director) of the Company or any Subsidiary of the Company that has been granted an Award under the Plan.

(o) "ISO" means any Option intended to be and designated as an incentive stock option within the meaning of Section 422 of the Code.

(p) "Long Term Incentive Program" means the program described in Section 6(b) hereof.

(q) "NQSO" means any Option that is not designated as an ISO.

(r) "Option" means a right, granted to a Grantee under Section 6(b)(i), to purchase shares of Stock. An Option may be either an ISO or an NQSO.

(s) "Other Cash-Based Award" means cash awarded under the Annual Incentive Program or the Long Term Incentive Program, including cash awarded as a bonus or upon the attainment of Performance Goals or otherwise as permitted under the Plan.

(t) "Other Stock-Based Award" means a right or other interest granted to a Grantee under the Annual Incentive Program or the Long Term Incentive Program that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock, including but not limited to (i) unrestricted Stock awarded as a bonus or upon the attainment of Performance Goals or otherwise as permitted under the Plan, and (ii) a right granted to a Grantee to acquire Stock from the Company containing terms and conditions prescribed by the Committee.

(u) "Performance Goals" means performance goals based on the attainment by the Company or any Subsidiary of the Company (or any division or business unit of such entity) of performance goals pre-established by the Committee, based on one or more of the following criteria (as determined in accordance with generally accepted accounting principles): (1) return on total stockholder equity; (2) earnings per share of Company Stock; (3) net income (before or after taxes); (4) earnings before any or all of interest, taxes, minority interest, depreciation and amortization; (5) sales or revenues; (6) return on assets, capital or investment; (7) market share; (8) cost management goals; (9) budget comparisons; (10) implementation or completion of critical projects or processes; (11) the formation of joint ventures, research or development collaborations, or the completion of other corporate transactions; (12) cost per ton of material; (13) cash flow return on average gross capital employed; (14) specified strategic objectives; (15) economic value created; (16) objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, information technology or budget comparisons; (17) total shareholder return and (18) any combination of, or a specified increase, decrease or change in, any of the foregoing. The performance goals may be based upon the attainment of specified levels of performance under one or more of the measures described above relative to the performance of other entities. To the extent permitted under Section 162(m) of the Code (including, without limitation, compliance with

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any requirements for stockholder approval) or applicable to an Award not intended to constitute performance-based compensation for purposes of Section 162(m), the Committee may designate additional business criteria on which the performance goals may be based or adjust, modify or amend the aforementioned business criteria. Performance Goals may include a threshold level of performance below which no Award will be earned, a level of performance at which the target amount of an Award will be earned and a level of performance at which the maximum amount of the Award will be earned. The Committee shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary of the Company or the financial statements of the Company or any Subsidiary of the Company, in response to changes in applicable laws or regulations, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business or related to a change in accounting principles.

(v) "Person" shall have the meaning set forth in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (1) the Company or any Subsidiary Corporation, (2) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary Corporation, (3) an underwriter temporarily holding securities pursuant to an offering of such securities, or (4) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(w) "Plan" means this CF INDUSTRIES HOLDINGS, INC. 2014 Equity and Incentive Plan, as amended from time to time.

(x) "Restricted Stock" means an Award of shares of Stock to a Grantee under Section 6(b)(iii) that may be subject to certain restrictions and to a risk of forfeiture.

(y) "Restricted Stock Unit" means a right granted to a Grantee under Section 6(b)(iv) to receive Stock or cash at the end of a specified deferral period, which right may be conditioned on the satisfaction of specified performance or other criteria.

(z) "Rule 16b-3" means Rule 16b-3, as from time to time in effect promulgated by the Securities and Exchange Commission under Section 16 of the Exchange Act, including any successor to such Rule.

(aa) "Securities Act" means the Securities Act of 1933, as amended from time to time, and as now or hereafter construed, interpreted and applied by regulations, rulings and cases.

(bb) "Stock" means shares of the common stock, par value \$0.01 per share, of the Company.

(cc) "Stock Appreciation Right" or "SAR" means the right, granted to a Grantee under Section 6(b)(ii), to be paid an amount measured by the appreciation in the Fair Market Value of Stock from the date of grant to the date of exercise of the right.

(dd) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(ee) "Total Authorized Shares" shall have the meaning set forth in Section 5 of the Plan.

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3. *Administration.*

The Plan shall be administered by the Committee. The Committee shall have the authority in its discretion, subject to and not inconsistent with the express provisions of the Plan, to administer the Plan and to exercise all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan, including, without limitation, the authority to grant Awards; to determine the persons to whom and the time or times at which Awards shall be granted; to determine the type and number of Awards to be granted, the number of shares of Stock to which an Award may relate and the terms, conditions, restrictions and performance criteria relating to any Award; to determine Performance Goals (if applicable, no later than such time as required to ensure that an underlying Award which is intended to comply with the requirements of Section 162(m) of the Code so complies); and to determine whether, to what extent, and under what circumstances an Award may be settled, cancelled, forfeited, exchanged, or surrendered; to make adjustments in the terms and conditions of, and the Performance Goals (if any) included in, Awards; to construe and interpret the Plan and any Award; to prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of the Award Agreements (which need not be identical for each Grantee); and to make all other determinations deemed necessary or advisable for the administration of the Plan. Notwithstanding the foregoing (but without limiting the authority of the Committee under Section 3 hereof), neither the Board, the Committee nor their respective delegates shall have the authority to re-price (or cancel and re-grant) any Option, SAR or, if applicable, other Award at a lower exercise, base or purchase price; to cancel any such Award in exchange for cash; or to exchange any Option or SAR that has been granted to a Grantee for an Award other than an Option or SAR, in each case without first obtaining the approval of the Company's stockholders.

All determinations of the Committee shall be made by a majority of its members either present in person or participating by conference telephone at a meeting or by written consent. The Committee may delegate to one or more of its members or to one or more agents such administrative duties as it may deem advisable, and the Committee or any person to whom it has delegated duties as aforesaid may employ one or more persons to render advice with respect to any responsibility the Committee or such person may have under the Plan, provided that the Committee shall not delegate its authority to grant, and determine the terms of, Awards granted to any Covered Employee. All decisions, determinations and interpretations of the Committee shall be final and binding on all persons, including but not limited to the Company, any Subsidiary of the Company, or Grantee (or any person claiming any rights under the Plan from or through any Grantee) and any stockholder.

No member of the Board or Committee shall be liable for any action taken or determination made in good faith with respect to the Plan or any Award granted hereunder.

4. *Eligibility.*

Awards may be granted to executive officers and other key employees, consultants and independent contractors (including non-employee directors) of the Company or its Subsidiaries, including officers and directors who are employees, and to key consultants to the Company or its Subsidiaries. In determining the persons to whom Awards shall be granted and the number of Shares to be covered by each Award, the Committee shall take into account the duties of the respective persons, their present and potential contributions to the success of the Company or its Subsidiaries and such other factors as the Committee shall deem relevant in connection with accomplishing the purposes of the Plan.

5. *Stock Subject to the Plan.*

The maximum number of shares of Stock reserved for the grant of Awards under the Plan ("Total Authorized Shares") shall be the sum of (i) 2,789,725 and (ii) the number of shares subject to outstanding awards under the CF Industries Holdings, Inc. 2005 Equity and Incentive Plan and the CF Industries Holdings, Inc. 2009 Equity and Incentive Plan (the "2009 Plan") as of the date this Plan is

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approved by the Company's shareholders, but only to the extent such awards terminate or expire on or after such date without the delivery of shares, in each case subject to adjustment as provided herein. For purposes of determining the number of shares of Stock available for grant under the Plan, each share of Stock subject to or issued in respect of an Option or a Stock Appreciation Right shall be counted against the Total Authorized Shares as one (1) share. Each share of Stock subject to or issued in respect of an Award other than an Option or Stock Appreciation Right shall be counted against the Total Authorized Shares as 1.61 shares. Subject to adjustment as provided herein, Awards of Option and Stock Appreciation Rights covering no more than 1,000,000 of the Total Authorized Shares may be awarded under the Plan to any individual in a single calendar year. Determinations made in respect of the limitation set forth in the immediately preceding sentence shall be made in a manner consistent with Section 162(m) of the Code. Total Authorized Shares may, in whole or in part, be authorized but unissued shares or shares that shall have been or may be reacquired by the Company in the open market, in private transactions or otherwise. Subject to the following sentence, if any shares subject to an Award are forfeited, cancelled, exchanged or surrendered or if an Award terminates or expires without a distribution of shares to the Grantee, the shares of stock with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, termination or expiration, again be available for Awards under the Plan; provided that to the extent an Award counted as one share is returned to the Plan, the Total Authorized Shares will be credited with one share and, to the extent that shares of stock subject to an Award that counted as 1.61 shares is returned to the Plan, the Total Authorized Shares will be credited with 1.61 shares. The following shares shall not be available for future grant: (i) shares tendered or withheld in payment of the exercise price of an Option and (ii) shares withheld by the Company or otherwise received by the Company to satisfy tax withholding obligations. In addition, the Total Authorized Shares shall not be increased by any shares of Common Stock repurchased by the Company with Option proceeds. Upon the exercise of any Award granted in tandem with any other Award, such related Award shall be cancelled to the extent of the number of shares of Stock as to which the Award is exercised and such number of shares shall no longer be available for Awards under the Plan. All shares of Stock covered by a Stock Appreciation Right shall be counted against the Total Authorized Shares.

In the event of a dividend (other than a normal cash dividend) or other distribution (whether in the form of cash, Stock, or other property), recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, combination, or share exchange, or other similar corporate transaction or event which affects the Stock, the Committee shall appropriately adjust the number and kind of shares of Stock or other property (including cash) that may thereafter be issued in connection with new Awards and shall also adjust, in each case, in order to prevent dilution or enlargement of the rights of Grantees under the Plan, (i) the number and kind of shares of Stock or other property (including cash) issued or issuable in respect of outstanding Awards, (ii) the exercise price, grant price, or purchase price relating to any outstanding Award, provided, that, with respect to ISOs, such adjustment shall be made in accordance with Section 424(h) of the Code; and (iii) if applicable and to the extent the Committee determines to be appropriate, the Performance Goals applicable to outstanding Awards. The Committee shall have the authority to determine the specific adjustments that shall be made in each case in order to achieve the objectives stated in the preceding sentence. The decision of the Committee regarding any such adjustment shall be final, binding and conclusive.

6. *Specific Terms of Awards.*

(a) *General.* The term of each Award shall be for such period as may be determined by the Committee. Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company or any Subsidiary of the Company upon the grant, maturation, or exercise of an Award may be made in such forms as the Committee shall determine at the date of grant or thereafter, which may include, without limitation, cash, Stock, or other property, and may be made in a single payment or transfer, in installments, or on a deferred basis (consistent with Section 8(c)). The Committee may make rules relating to installment or deferred payments with

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respect to Awards, including the rate of interest to be credited with respect to such payments. In addition to the foregoing, the Committee may impose on any Award or the exercise thereof, at the date of grant or thereafter, such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall determine.

(b) *Long Term Incentive Program.* Under the Long Term Incentive Program, the Committee is authorized to grant the Awards described in this Section 6(b), under such terms and conditions as deemed by the Committee to be consistent with the purposes of the Plan. Such Awards may be granted with value and payment contingent upon the attainment of Performance Goals. Each Award granted under the Long Term Incentive Program shall be evidenced by an Award Agreement containing such terms and conditions applicable to such Award as the Committee shall determine at the date of grant or thereafter.

(i) *Options.* The Committee is authorized to grant Options to Grantees on the following terms and conditions:

(A) *Type of Award.* The Award Agreement evidencing the grant of an Option under the Plan shall designate the Option as an ISO or an NQSO.

(B) *Exercise Price.* The exercise price per share of Stock purchasable under an Option shall be determined by the Committee, but in no event shall the exercise price of any Option be less than the Fair Market Value of a share of Stock on the date of grant of such Option. The exercise price for Stock subject to an Option may be paid in cash or by an exchange of Stock previously owned by the Grantee (subject to such conditions as may be imposed by the Committee), through a "broker cashless exercise" procedure approved by the Committee, a combination of the above, or any other method approved the Committee, in any case in an amount having a combined value equal to such exercise price.

(C) *Term and Exercisability of Options.* Unless the Committee determines otherwise, the date on which the Committee adopts a resolution expressly granting an Option shall be considered the day on which such Option is granted. Options shall be exercisable over the exercise period (which shall not exceed ten years from the date of grant), at such times and upon such conditions as the Committee may determine, as reflected in the Award Agreement; provided, that the Committee shall have the authority to accelerate the exercisability of any outstanding Option at such time and under such circumstances as it, in its sole discretion, deems appropriate. An Option may be exercised to the extent of any or all full shares of Stock as to which the Option has become exercisable, by such procedures as the Committee may adopt or authorize.

(D) *Termination of Employment, etc.* An Option may not be exercised unless the Grantee is then a director of, in the employ of, or then maintains an independent contractor relationship with, the Company or a Subsidiary of the Company, and unless the Grantee remains in Continuous Service, since the date of grant of the Option; provided, that the Award Agreement may contain provisions extending the exercisability of Options, in the event of specified terminations, to a date not later than the expiration date of such Option.

(E) *Dividends.* No dividend or dividend equivalents shall be payable in respect of outstanding Options. A Grantee shall have no rights to dividends, dividend equivalents or any other rights of a stockholder with respect to the shares of Stock subject to an Option until the Grantee has given written notice of the exercise thereof, has paid in full for such shares and has satisfied the requirements of Section 6(b)(i)(B) and 8(c) hereof, and the shares are delivered to the Grantee.

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(F) *Other Provisions.* Options may be subject to such other conditions including, but not limited to, restrictions on transferability of the shares acquired upon exercise of such Options, as the Committee may prescribe in its discretion or as may be required by applicable law.

(ii) *SARs.* The Committee is authorized to grant SARs to Grantees on the following terms and conditions:

(A) *In General.* SARs may be granted independently or in tandem with an Option. Unless the Committee determines otherwise, a SAR (1) granted in tandem with an NQSO may be granted at the time of grant of the related NQSO or at any time thereafter or (2) granted in tandem with an ISO may only be granted at the time of grant of the related ISO. A SAR granted in tandem with an Option shall be exercisable only to the extent the underlying Option is exercisable. Payment of a SAR may be made in cash, Stock, or property as specified in the Award Agreement or determined by the Committee. The maximum term of any SAR shall be ten years from the date of grant.

(B) *SARs.* A SAR shall confer on the Grantee a right to receive an amount with respect to each share subject thereto, upon exercise thereof, equal to the excess of (1) the Fair Market Value of one share of Stock on the date of exercise over (2) the grant price of the SAR (which in the case of an SAR granted in tandem with an Option shall be equal to the exercise price of the underlying Option, and which in the case of any other SAR shall be such price as the Committee may determine, which shall not be less than the Fair Market Value of one share of Stock on the date of grant).

(C) *Dividends.* No dividend or dividend equivalents shall be payable in respect of outstanding SARs. A Grantee shall have no rights to dividends, dividend equivalents or any other rights of a stockholder with respect to the shares of Stock subject to a SAR until the Grantee has given written notice of the exercise thereof, has satisfied the requirements of Section 8(c) hereof, and payment for such exercised SARs has been delivered to the Grantee.

(iii) *Restricted Stock.* The Committee is authorized to grant Restricted Stock to Grantees on the following terms and conditions:

(A) *Issuance and Restrictions.* Restricted Stock shall be subject to such restrictions on transferability and other restrictions, if any, as the Committee may impose at the date of grant or thereafter, which restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, or otherwise, as the Committee may determine. The Committee may place restrictions on Restricted Stock that lapse, in whole or in part, upon the attainment of Performance Goals.

(B) *Forfeiture.* Upon termination of employment with or service to the Company or any Subsidiary of the Company, during the applicable restriction period, Restricted Stock shall be forfeited; provided, that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of terminations resulting from specified causes.

(C) *Certificates for Stock.* Restricted Stock granted under the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Stock are registered in the name of the Grantee, such certificates shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company shall retain physical possession of the certificate.

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(D) *Dividends.* Dividends paid on Restricted Stock shall, at the discretion of the Committee, be paid at the dividend payment date either in cash or in shares of Stock having a Fair Market Value equal to the amount of such dividends. Stock distributed in connection with a stock split or a stock dividend, Stock distributed in connection with a special dividend, and any property other than Stock or cash distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Restricted Stock with respect to which such Stock or other property has been distributed. Notwithstanding the foregoing, dividends with respect to performance-based Restricted Stock for which the applicable performance period has not yet concluded will be accrued during the applicable performance period and will not be paid unless and until the Restricted Stock becomes earned based on the achievement of the performance goals applicable to such Restricted Stock.

(iv) *Restricted Stock Units.* The Committee is authorized to grant Restricted Stock Units to Grantees, subject to the following terms and conditions:

(A) *Award and Restrictions.* Delivery of Stock or cash, as determined by the Committee, will occur upon expiration of the deferral or vesting period specified for Restricted Stock Units by the Committee. The Committee may place restrictions on Restricted Stock Units that lapse, in whole or in part, upon the attainment of Performance Goals.

(B) *Dividend Equivalents.* The Committee may authorize the payment of dividend equivalents with respect to Restricted Stock Units. Dividend equivalents paid on Restricted Stock Units shall, at the discretion of the Committee, be paid at the dividend payment date either in cash or in shares of Stock having a Fair Market Value equal to the amount of such dividends. Stock distributed in connection with a stock split or a stock dividend, Stock distributed in connection with a special dividend, and any property other than Stock or cash distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Restricted Stock Units with respect to which such Stock or other property has been distributed. Notwithstanding the foregoing, dividend equivalents with respect to performance-based Restricted Stock Units for which the applicable performance period has not yet concluded will be accrued during the applicable performance period and will not be paid unless and until the Restricted Stock Units become earned based on the achievement of performance goals applicable to such Restricted Stock Units.

(C) *Forfeiture.* Upon termination of employment with or service to the Company or any Subsidiary of the Company, during the applicable deferral period or portion thereof to which forfeiture conditions apply, or upon failure to satisfy any other conditions precedent to the delivery of Stock or cash to which such Restricted Stock Units relate, all Restricted Stock Units and any accrued but unpaid dividend equivalents that are then subject to deferral or restriction shall be forfeited; provided, that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Restricted Stock Units will be waived in whole or in part in the event of termination resulting from specified causes.

(v) *Other Stock- or Cash-Based Awards.* The Committee is authorized to grant Awards to Grantees in the form of Other Stock-Based Awards or Other Cash-Based Awards, as deemed by the Committee to be consistent with the purposes of the Plan. Awards granted pursuant to this paragraph may be granted with value and payment contingent upon Performance Goals, so long as such goals relate to periods of performance in excess of one calendar year. The Committee shall determine the terms and conditions of such Awards at the

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date of grant or thereafter. The maximum value of the aggregate payment that any Grantee may receive with respect to Other Cash-Based Awards pursuant to this Section 6(b)(v) in respect of any annual performance period is \$3,000,000 and for any other performance period in excess of one year, such amount multiplied by a fraction, the numerator of which is the number of months in the performance period and the denominator of which is twelve. Payments earned hereunder may be decreased or, with respect to any Grantee who is not a Covered Employee, increased in the sole discretion of the Committee based on such factors as it deems appropriate. No payment shall be made to a Covered Employee prior to the certification by the Committee that the Performance Goals have been attained. The Committee may establish such other rules applicable to the Other Stock- or Cash-Based Awards to the extent not inconsistent with Section 162(m) of the Code (if such Awards are intended to be performance-based compensation for purposes of Section 162(m)).

(c) *Annual Incentive Program.* The Committee is authorized to grant Awards to Grantees pursuant to the Annual Incentive Program, under such terms and conditions as deemed by the Committee to be consistent with the purposes of the Plan. The maximum value of the aggregate payment that any Grantee may receive under the Annual Incentive Program in respect of any calendar year is \$3,000,000. Payments earned hereunder may be decreased or, with respect to any Grantee who is not a Covered Employee, increased in the sole discretion of the Committee based on such factors as it deems appropriate. No payment shall be made to a Covered Employee prior to the certification by the Committee that the Performance Goals have been attained (if such Award is intended to be performance-based compensation for purposes of Section 162(m)). The Committee may establish such other rules applicable to the Annual Incentive Program to the extent not inconsistent with Section 162(m) of the Code (if such Awards are intended to be performance-based compensation for purposes of Section 162(m)).

7. *Change in Control Provisions.*

Unless otherwise determined by the Committee and evidenced in an Award Agreement, in the event of a Change of Control:

(a) any Award carrying a right to exercise that was not previously vested and exercisable shall become fully vested and exercisable; and

(b) the restrictions, deferral limitations, payment conditions, and forfeiture conditions applicable to any other Award granted under the Plan shall lapse and such Awards shall be deemed fully vested to the extent not then vested, and any shares underlying such Awards shall be delivered, and any performance conditions imposed with respect to Awards shall be deemed to be fully achieved. Fully achieved is defined as the higher of target or actual performance to-date.

8. *General Provisions.*

(a) *Nontransferability.* Unless otherwise determined by the Committee, Awards shall not be transferable by a Grantee except by will or the laws of descent and distribution and shall be exercisable during the lifetime of a Grantee only by such Grantee or his guardian or legal representative. No Award may transferred for value prior to the vesting, exercise or delivery of Stock with respect to such Award, as the case may be.

(b) *No Right to Continued Employment, etc.* Nothing in the Plan or in any Award, any Award Agreement or other agreement entered into pursuant hereto shall confer upon any Grantee the right to continue in the employ or service of the Company or Subsidiary of the Company or to be entitled to any remuneration or benefits not set forth in the Plan or such Award Agreement or other agreement or to interfere with or limit in any way the right of the Company or any such Subsidiary to terminate such Grantee's employment or independent contractor relationship.

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(c) *Taxes.* The Company or any Subsidiary of the Company is authorized to withhold from any Award granted, any payment relating to an Award under the Plan, including from a distribution of Stock, or any other payment to a Grantee, amounts of withholding and other taxes due in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company and Grantees to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority shall include authority to withhold or receive Stock or other property and to make cash payments in respect thereof in satisfaction of a Grantee's tax obligations. The Committee may provide in the Award Agreement that in the event that a Grantee is required to pay any amount to be withheld in connection with the issuance of shares of Stock in settlement or exercise of an Award, the Grantee shall or may satisfy such obligation (in whole or in part) by electing to have withheld a portion of the shares of Stock otherwise to be received upon settlement or exercise of such Award equal to the minimum amount required to be withheld. All Awards made under the Plan are intended to be exempt from, or to comply with, the requirements of Section 409A of the Code and any regulations or guidance promulgated thereunder and the Plan and such Awards shall be interpreted in a manner consistent with such interpretation.

(d) Stockholder Approval; Amendment and Termination.

(i) The Plan shall take effect upon its approval by the Company's shareholders. Upon such approval, no further grants shall be made under the 2009 Plan. Awards outstanding under the 2009 Plan as of such date shall continue to be outstanding in accordance with their terms and the terms of the 2009 Plan.

(ii) The Board may at any time and from time to time alter, amend, suspend, or terminate the Plan in whole or in part; provided, however, that unless otherwise determined by the Board, an amendment that requires stockholder approval in order for the Plan to continue to comply with Section 162(m) or any other law, regulation or stock exchange requirement shall not be effective unless approved by the requisite vote of stockholders. Without limiting the generality of the foregoing, stockholder approval shall be required for any amendment to the Plan which (a) increases the maximum number of shares of Stock available under the Plan, (b) changes the conditions for eligibility to participate in the Plan, (c) otherwise materially increases the benefits accruing to Plan participants, (d) permits the Committee to waive vesting requirements (other than in connection with a Change in Control or a change in the participant's employment or service relationship) or (e) amends the provisions of this Section 8(d)(ii). Notwithstanding the foregoing, no amendment to or termination of the Plan shall affect adversely any of the rights of any Grantee, without such Grantee's consent, under any Award theretofore granted under the Plan. Prior to the occurrence of a Change in Control, the Committee may expand, reduce or otherwise change any and all opportunities, Awards, and any and all financial factors, or financial measures used in outstanding Awards under the Annual Incentive Program for any reason at any time before, during or after the calendar year to which an Award relates. All changes described in this paragraph are at the sole discretion of the Board and/or the Committee, may be made at any time, and may have a retroactive effective date.

(e) *Clawback Policy.* Any Award granted under this Plan is subject to any applicable recoupment or "clawback" policies of the Company, as amended from time to time, or as may be set forth in an Award Agreement.

(f) *Expiration of Plan.* Unless earlier terminated by the Board pursuant to the provisions of the Plan, the Plan shall expire on the tenth anniversary of the date the Plan is approved by the Company's shareholders. No Awards shall be granted under the Plan after such expiration date. The expiration of the Plan shall not affect adversely any of the rights of any Grantee, without such Grantee's consent, under any Award theretofore granted.

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(g) *Deferrals.* The Committee shall have the authority to establish such procedures and programs that it deems appropriate to provide Grantees with the ability to defer receipt of cash, Stock or other property payable with respect to Awards granted under the Plan, consistent with the requirements of Section 409A of the Code.

(h) *No Rights to Awards; No Stockholder Rights.* No Grantee shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Grantees. Except as provided specifically herein, a Grantee or a transferee of an Award shall have no rights as a stockholder with respect to any shares covered by the Award until the date of the issuance of a stock certificate to him for such shares or the issuance of shares to him in book-entry form.

(i) *Unfunded Status of Awards.* The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Grantee pursuant to an Award, nothing contained in the Plan or any Award shall give any Grantee any rights that are greater than those of a general creditor of the Company.

(j) *No Fractional Shares.* No fractional shares of Stock shall be required to be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, other Awards, or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

(k) *Regulations and Other Approvals.*

(i) The obligation of the Company to sell or deliver Stock with respect to any Award granted under the Plan shall be subject to all applicable laws, rules and regulations, including all applicable federal and state securities laws, and the obtaining of all such approvals by governmental agencies as may be deemed necessary or appropriate by the Committee.

(ii) Each Award is subject to the requirement that, if at any time the Committee determines, in its absolute discretion, that the listing, registration or qualification of Stock issuable pursuant to the Plan is required by any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the grant of an Award or the issuance of Stock, no such Award shall be granted or payment made or Stock issued, in whole or in part, unless listing, registration, qualification, consent or approval has been effected or obtained free of any conditions not acceptable to the Committee.

(iii) In the event that the disposition of Stock acquired pursuant to the Plan is not covered by a then current registration statement under the Securities Act and is not otherwise exempt from such registration, such Stock shall be restricted against transfer to the extent required by the Securities Act or regulations thereunder, and the Committee may require a Grantee receiving Stock pursuant to the Plan, as a condition precedent to receipt of such Stock, to represent to the Company in writing that the Stock acquired by such Grantee is acquired for investment only and not with a view to distribution.

(iv) The Committee may require a Grantee receiving Stock pursuant to the Plan, as a condition precedent to receipt of such Stock, to enter into a stockholder agreement or "lock-up" agreement in such form as the Committee shall determine is necessary or desirable to further the Company's interests.

(l) *Governing Law.* The Plan and all determinations made and actions taken pursuant hereto shall be governed by the laws of the State of Delaware without giving effect to the conflict of laws principles thereof.













